

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In the Matter:	:	Case No. 10-61467
Gregory James Null	:	Chapter 13 (Judge Caldwell)
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Debtor	:	
Gregory James Null	:	
27489 Ford Reed Rd.	:	
Richwood, OH 43344	:	
Plaintiff,	:	Adv. Proc. No.
v.	:	
Residential Credit Solutions	:	
4282 North Freeway	:	
Fort Worth, TX 76137	:	
Defendant.	:	

COMPLAINT TO AVOID MORTGAGE

1. Plaintiff states that a petition for relief pursuant to Chapter 13 of The United States Bankruptcy Code was filed on September 24, 2010.
2. This Court has jurisdiction to determine this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference entered in this district. Debtor states that this is a core proceeding under 28 U.S.C. §157(b)(2)(I). Venue is proper under 28 U.S.C. § 1409(a).
3. Plaintiff states that the Chapter 13 Trustee holds the position of a lien creditor with rights of a bona fide purchaser of real property pursuant to the provisions of 11 U.S.C. § 544(a)(3).
4. Plaintiff states that the Mandatory Chapter 13 Form Plan effective October 23, 2007 and revised April 17, 2008 gives the Debtor “standing and authority to file the motion or adversary proceeding; to the extent that the Trustee has standing to bring such action, standing is hereby assigned to Debtor.”
5. Plaintiff owns the real estate located at 27489 Ford Reed Rd., Richwood, OH 43344 (Parcel No. 05-0007031.003), more fully described in the legal description in Exhibit B.
6. Plaintiff states disclosed said real estate on Schedule A, which has a fair market appraised value of \$137,600.00 (Exhibit A).
7. Plaintiff states that the residential real estate is subject to a first mortgage lien to The Bank of New York Mellon as Trustee for the Benefit of Alternative Loan Trust 2007-J1 Mortgage Pass-through Certificates, Series 2007-J1 (“Bank of New York”) serviced by Bank of America, which was recorded in the Union County Recorder’s Office on (Instrument No. 332243) with an approximate outstanding balance of \$165,548.78 (Exhibit B).
8. This mortgage was originally given to Intervale Mortgage Corporation, but was assigned to Bank of New York on February 6, 2009 (Instrument Number 355645). The Servicer was originally Countrywide, and then BAC Home Loan Servicing, but is now Bank of America as both Countrywide and BAC Home Loan Servicing are owned and now part of Bank of America. (Exhibit B).

9. Plaintiff states that the residential real estate is subject to a second mortgage lien to Residential Credit Solutions recorded in the Union County Recorder's Office on (Instrument No. 332244) with an approximate outstanding balance of \$33,626.29 (Exhibit C).
10. This mortgage was originally held by Intervale Mortgage, but was assigned to Decision One Mortgage and then to Residential Credit Solutions.
11. Plaintiff states that the mortgage lien of Residential Credit Solutions is junior to the superior lien of Bank of New York Mellon.
12. Plaintiff states that there exists insufficient equity in the residential real estate to deem Residential Credit Solutions as secured.
13. Plaintiff states that pursuant to the pertinent provisions of 11 U.S.C. § 506(a) and 506(d) as made applicable in this case by 11 U.S.C. § 1325(a)(5), Residential Credit Solutions is not the holder of a secured claim as that term is defined in the United States Bankruptcy Code § 506(a).

WHEREFORE, the Plaintiff demands that:

1. The mortgage lien of Residential Credit Solutions , which is recorded as Instrument No. in the Union County Ohio Recorder's Official Records on be found to be VOID and that the Court order the mortgage to be released and forever discharged;
2. The mortgage of Residential Credit Solutions be deemed an unsecured debt;
3. For such further relief that the Court finds just and equitable.

Respectfully submitted,

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April 11, 2012
Date